

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITE HERE HEALTH, <i>et al.</i> ,)	
)	
Plaintiffs,)	CIVIL ACTION
)	
vs.)	NO. 17 C 8192
)	
THE DESMOND 433 CORP., a New York)	JUDGE JOHN Z. LEE
corporation, d/b/a DESMOND'S TAVERN,)	
)	
Defendant.)	

**PLAINTIFFS' MOTION TO REOPEN CASE FOR
THE LIMITED PURPOSE OF ENFORCING THE
TERMS OF THE CONSENT DECREE AND
ENTERING JUDGMENT AGAINST DEFENDANT**

NOW COME Plaintiffs, UNITE HERE HEALTH, *et al.*, by their attorneys, and move the Court for the entry of an order reopening this action for the limited purpose of enforcing the terms of the Consent Decree entered into between the parties and entered by this Court on January 24, 2018. In support of the Motion, Plaintiffs state as follows:

1. This action was originally brought by the Plaintiffs, the jointly-administered, labor-management employee welfare benefit plan known as UNITE HERE HEALTH, alleging, *inter alia*, that Defendant breached its obligations under the terms of the collective bargaining agreement entered into with UNITE HERE Local 100. Specifically, Plaintiffs allege that Defendant failed to remit payment of contributions for work performed on its behalf by beneficiaries of the Plaintiff Fund. The Complaint was brought pursuant to the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§1132, 1145.

2. On January 24, 2018, a Consent Decree incorporating the terms for settlement agreed to by the parties was entered by this Court (a copy of the Consent Decree is attached as Exhibit A).

3. On January 24, 2018, this Court dismissed this cause of action with prejudice pursuant to the terms of the Consent Decree (a copy of the Court's Notification of Docket Entry dated January 24, 2018 is attached as Exhibit B).

4. Defendant agreed that it owed the total amount of \$28,331.57 for contributions, liquidated damages, interest, late fee and attorneys' fees for the time period through November 2017, as set forth in Paragraph 8 of the Consent Decree.

5. Defendant agreed to make payment to Plaintiff Fund of \$28,331.57, plus 6.25% interest on the declining principal balance in the amount of \$968.27, for a total of \$29,299.84, in twelve (12) monthly payments of \$2,441.65 each commencing on or before February 1, 2018 and continuing on the first day of every month thereafter through and including January 1, 2019.

6. Defendant also agreed to remain current in its contribution obligations to Plaintiff Fund for the work months of December 2017 forward, as set forth in Paragraph 10 of the Consent Decree.

7. The Consent Decree provides that in the event Defendant fails to remit timely payments due under Paragraph 8 of the Consent Decree or fails to remit timely reports and contributions as they become due, the Fund shall provide the Defendant with a written notice by letter sent by facsimile and United States Postal Service of any alleged breach of the terms of the Consent Decree to: Mr. Hubert Connolly, The Desmond 433 Corp., 433 park Avenue South, New York, NY 10016-8002. Defendant shall have 48 hours from the date of the letter to cure any breach before the Fund moves to enforce the terms of the Consent Decree.

8. The Consent Decree further provides that if Defendant fails to cure any breach of the Consent Decree within 48 hours from the date the letter to cure any breach is sent by the Fund, Defendant agrees and consents to entry of judgment for all unpaid amounts due under Paragraph 8 of the Consent Decree, plus all unpaid contributions that accrue through the date of entry of judgment, including all attorneys' fees and costs incurred by the Fund as a result of Defendant's violation of the Consent Decree.

9. Defendant failed to remit its March 2018 contributions, which were due on April 15, 2018. On April 20, 2018, the Fund sent a cure letter to Defendant pursuant to Paragraph 10 of the Consent Decree (a copy of the Fund's April 20, 2018 letter to Defendant is attached hereto as Exhibit C).

10. Defendant failed to remit payment of its monthly installment of \$2,441.65 due on May 1, 2018. On May 3, 2018, the Fund sent a cure letter to Defendant pursuant to Paragraph 10 of the Consent Decree (a copy of the Fund's May 3, 2018 letter to Defendant is attached hereto as Exhibit D).

11. Defendant's installment payment due on April 1, 2018, for which Defendant submitted a check in the amount of \$2,500.00, was dishonored by its bank for 'nonsufficient funds.' Additionally, the check submitted by Defendant as payment of its March 2018 contributions was also dishonored by its bank for 'nonsufficient funds.' On May 10, 2018, the Fund sent a cure letter to Defendant pursuant to Paragraph 10 of the Consent Decree (a copy of the Fund's May 10, 2018 letter to Defendant is attached hereto as Exhibit E). On May 22, 2018, the Fund received a replacement check in the amount of \$3,000.00 for the March 2018 contributions. No replacement check was received for the April 1, 2018 installment.

12. As of the date of filing the instant motion, Defendant has not submitted its installment payments due on April 1, 2018 and May 1, 2018 and has failed to submit its April 2018 report and the contributions due thereon. In addition, Defendant has incurred liquidated damages and interest by the late payment of contributions for September 2017 through April 2018.

13. For all the reasons stated, the Plaintiffs hereby move the Court for the entry of an Order reopening this action for the limited purpose of enforcing the terms of the Consent Decree and entering judgment against the Defendant. Specifically, Plaintiffs request:

- A. That judgment be entered in favor of Plaintiffs and against Defendant to include the amount of \$24,358.19, being the total amount remaining due for contributions, liquidated damages, interest, late fee and attorneys' fees for the time period through November 2017 pursuant to the Consent Decree.
- B. That judgment be entered in favor of Plaintiffs and against Defendant to include the amount of \$6,102.57, being the total amount due for contributions for April 2018 and liquidated damages and interest incurred for September 2017 through April 2018.
- C. That judgment be entered in favor of Plaintiffs and against Defendant to include \$485.00 in attorneys' fees incurred by Plaintiffs in this matter as a result of Defendant's violation of the Consent Decree.
- D. That Plaintiffs have such further relief as may be deemed just and equitable by the Court.

/s/ Laura M. Finnegan

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CERTIFICATE OF SERVICE

The undersigned, an attorney of record, hereby certifies that she electronically filed the foregoing document (Motion to Reopen) with the Clerk of Court using the CM/ECF system, and further certifies that I have mailed the above-referenced document by United States Mail to the following non-CM/ECF participant on or before the hour of 5:00 p.m. this 31st day of May 2018:

Mr. Hubert Connolly
The Desmond 433 Corp., d/b/a Desmond's Tavern
433 Park Avenue South
New York, NY 10016-8002

/s/ Laura M. Finnegan

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